

HOUSE BILL 789

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

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AN ACT

RELATING TO LICENSING; AMENDING THE ACUPUNCTURE AND ORIENTAL  
MEDICINE PRACTICE ACT; CLARIFYING THE PROCEDURES AND SUBSTANCES  
THAT ARE WITHIN THE SCOPE OF ACUPUNCTURE AND ORIENTAL MEDICINE;  
PROVIDING FOR REFUNDABLE FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-14A-3 NMSA 1978 (being Laws 1993,  
Chapter 158, Section 11, as amended) is amended to read:

"61-14A-3. DEFINITIONS.--As used in the Acupuncture and  
Oriental Medicine Practice Act:

A. "acupuncture" means the surgical use of needles  
inserted into and removed from the body and the use of other  
devices, modalities and procedures at specific locations on the  
body for the prevention, cure or correction of any disease,  
illness, injury, pain or other condition by controlling and

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1 regulating the flow and balance of energy and function to  
2 restore and maintain health;

3 B. "board" means the board of acupuncture and  
4 oriental medicine;

5 C. "doctor of oriental medicine" means a person  
6 licensed as a physician to practice acupuncture and oriental  
7 medicine with the ability to practice independently, serve as a  
8 primary care provider and as necessary collaborate with other  
9 health care providers;

10 D. "mode of administration" means a manner by which  
11 a substance is introduced into the body, including forms such  
12 as subcutaneous injection, intramuscular injection, intravenous  
13 infusion, transdermal cream or patch, oral and suppository;

14 [~~D.~~] E. "moxibustion" means the use of heat on or  
15 above specific locations or on acupuncture needles at specific  
16 locations on the body for the prevention, cure or correction of  
17 any disease, illness, injury, pain or other condition;

18 [~~E.~~] F. "oriental medicine" means the distinct  
19 system of primary health care that uses all allied techniques  
20 of oriental medicine, both traditional and modern, to diagnose,  
21 treat and prescribe for the prevention, cure or correction of  
22 disease, illness, injury, pain or other physical or mental  
23 condition by controlling and regulating the flow and balance of  
24 energy, form and function to restore and maintain health;

25 [~~F.~~] G. "primary care provider" means a health care

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1 practitioner acting within the scope of the health care  
2 practitioner's license who provides the first level of basic or  
3 general health care for a person's health needs, including  
4 diagnostic and treatment services, initiates referrals to other  
5 health care practitioners and maintains the continuity of care  
6 when appropriate;

7 [G.] H. "techniques of oriental medicine" means:

8 (1) the diagnostic and treatment techniques  
9 used in oriental medicine that include diagnostic procedures;  
10 acupuncture; moxibustion; ~~manual therapy, also known as tui~~  
11 ~~na; other physical medicine modalities and therapeutic~~  
12 procedures] all traditional east Asian manual therapies and  
13 massage modalities, excluding chiropractic and osteopathy  
14 adjustments; breathing and exercise techniques; and dietary,  
15 nutritional and lifestyle counseling;

16 (2) the prescribing, administering, combining  
17 and providing of ~~herbal medicines] non-injectable herbs, all~~  
18 legal substances from the traditional east Asian pharmacopoeia,  
19 homeopathic medicines, vitamins, minerals, enzymes, glandular  
20 products, [natural substances, natural medicines]  
21 protomorphogens, [live cell products, gerovital] amino acids,  
22 lipids, carbohydrates, proteins, dietary and nutritional  
23 supplements, cosmetics as they are defined in the New Mexico  
24 Drug, Device and Cosmetic Act and nonprescription drugs as they  
25 are defined in the Pharmacy Act; and

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1 (3) the prescribing, administering and  
2 providing of devices, restricted devices and prescription  
3 devices, as those devices are defined in the New Mexico Drug,  
4 Device and Cosmetic Act, if the board determines by rule that  
5 the devices are necessary in the practice of oriental medicine  
6 and if the prescribing doctor of oriental medicine has  
7 fulfilled requirements for prescriptive authority in accordance  
8 with rules promulgated by the board for the devices enumerated  
9 in this paragraph; and

10 [H.] I. "tutor" means a doctor of oriental medicine  
11 with at least ten years of clinical experience who is a teacher  
12 of acupuncture and oriental medicine."

13 Section 2. Section 61-14A-8.1 NMSA 1978 (being Laws 2000,  
14 Chapter 53, Section 12, as amended) is amended to read:

15 "61-14A-8.1. EXPANDED PRACTICE AND RESTRICTIVE  
16 PRESCRIPTIVE AUTHORITY--CERTIFICATIONS.--

17 A. The board shall issue certifications [~~as~~  
18 ~~determined by rule of the board~~] for expanded practice [~~and~~  
19 with limited prescriptive authority only for the substances  
20 enumerated in [~~Paragraphs (1) and (2) of~~] Subsection [~~G~~] E of  
21 this section to a doctor of oriental medicine who has submitted  
22 completed forms provided by the board, paid the application fee  
23 for certification and submitted proof of successful completion  
24 of additional training required by rule of the board. The  
25 board shall adopt the rules determined by the board of pharmacy

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1 for additional training required for the prescribing,  
2 administering, compounding or dispensing of [~~caffeine,~~  
3 ~~procaine, oxygen, epinephrine and bioidentical hormones~~] the  
4 substances listed in Subsection E of this section. In the  
5 event that injectable or intravenous herbs such as those that  
6 are currently available in China ever become legally available  
7 in the United States, the New Mexico medical board and the  
8 board of pharmacy shall collaborate with the board of  
9 acupuncture and oriental medicine to determine suitable ways to  
10 provide certified education at an accredited institution to  
11 doctors of oriental medicine who wish to learn to administer  
12 these therapies safely under the regulation of the board of  
13 acupuncture and oriental medicine. The board, the New Mexico  
14 medical board and the board of pharmacy shall consult as  
15 appropriate.

16 ~~[B. The board shall issue certifications in the~~  
17 ~~four expanded practices of basic injection therapy, injection~~  
18 ~~therapy, intravenous therapy and bioidentical hormone therapy.~~

19 ~~G.]~~ B. The New Mexico medical board shall:

20 (1) promulgate rules to establish a training  
21 program, certification criteria and procedures whereby doctors  
22 of oriental medicine may obtain certification to prescribe,  
23 administer, compound and dispense nonprescription drugs as they  
24 are defined in the Pharmacy Act;

25 (2) make available to doctors of oriental

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1 medicine training that qualifies them for certification to  
2 prescribe, administer, compound and dispense nonprescription  
3 drugs as they are defined in the Pharmacy Act; and

4 (3) promulgate rules establishing the limits  
5 of the limited prescribing authority for doctors of oriental  
6 medicine who may become eligible for certification pursuant to  
7 this subsection.

8 C. The New Mexico medical board may:

9 (1) with the approval of the board of  
10 pharmacy, develop a formulary of dangerous drugs and controlled  
11 substances, as they are defined in the New Mexico Drug, Device  
12 and Cosmetic Act, the Controlled Substances Act or the Pharmacy  
13 Act and promulgate rules governing the prescribing,  
14 administering, compounding and dispensing of these dangerous  
15 drugs and controlled substances by qualified doctors of  
16 oriental medicine;

17 (2) establish criteria and procedures for  
18 certification of doctors of oriental medicine to qualify as  
19 practitioners with authority pursuant to the New Mexico Drug,  
20 Device and Cosmetic Act limited to prescribing, administering,  
21 combining and dispensing the dangerous drugs and controlled  
22 substances on that formulary;

23 (3) establish and offer to doctors of oriental  
24 medicine training in order that they may qualify to be  
25 certified as practitioners with limited authority pursuant to

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1 Paragraph (2) of this subsection;

2 (4) develop a formulary of approved modes of  
3 administration and promulgate rules governing the prescribing  
4 of these modes of administration by qualified doctors of  
5 oriental medicine;

6 (5) establish criteria and procedures for the  
7 certification of doctors of oriental medicine to qualify to  
8 prescribe, administer, compound and dispense the approved modes  
9 of administration on that formulary; and

10 (6) establish and offer to doctors of oriental  
11 medicine training in order that they may qualify to be  
12 certified to administer approved modes of administration  
13 pursuant to Paragraph (5) of this subsection.

14 D. A doctor of oriental medicine who is certified  
15 as a practitioner with limited prescriptive authority pursuant  
16 to Subsection C of this section shall not use any substance or  
17 mode of administration that does not appear on a formulary of  
18 approved dangerous drugs or a formulary of approved modes of  
19 administration.

20 E. The doctor of oriental medicine's expanded  
21 practice and prescriptive authority shall include

22 ~~[(1) the prescribing, administering,~~  
23 ~~compounding and dispensing of herbal medicines, homeopathic~~  
24 ~~medicines, vitamins, minerals, amino acids, proteins, enzymes,~~  
25 ~~carbohydrates, lipids, glandular products, natural substances,~~

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1 ~~natural medicines, protomorphogens, live cell products,~~  
2 ~~gerovital, dietary and nutritional supplements, cosmetics as~~  
3 ~~they are defined in the New Mexico Drug, Device and Cosmetic~~  
4 ~~Act and nonprescription drugs as they are defined in the~~  
5 ~~Pharmacy Act; and~~

6           (2)] the prescribing, administering,  
7 compounding and dispensing of the following drugs, dangerous  
8 drugs or controlled substances as [they] drugs, dangerous drugs  
9 and controlled substances are defined in the New Mexico Drug,  
10 Device and Cosmetic Act, the Controlled Substances Act or the  
11 Pharmacy Act, if the prescribing doctor of oriental medicine  
12 has fulfilled the requirements for expanded practice and  
13 prescriptive authority in accordance with the rules promulgated  
14 by the board for the substances enumerated in this [paragraph]  
15 subsection:

- 16           [(a)] (1) sterile water;  
17           [(b)] (2) sterile saline;  
18           [(c)] ~~sarapin or its generic;~~  
19           (d) ~~caffeine;~~  
20           (e) ~~procaine;~~  
21           (f) ~~oxygen;~~  
22           (g) ~~epinephrine;~~  
23           (h) ~~vapocoolants;~~  
24           (i) ~~bioidentical hormones;~~  
25           (j) ~~biological products, including~~

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1 ~~therapeutic serum; and~~

2 ~~(k) any of the drugs or substances~~  
3 ~~enumerated in Paragraph (l) of this subsection if at any time~~  
4 ~~those drugs or substances are classified as dangerous drugs or~~  
5 ~~controlled substances]~~

6 (3) inhaled oxygen;

7 (4) subcutaneous and intramuscular  
8 epinephrine, for emergency use in case of shock;

9 (5) topical vaporcoolants; and

10 (6) injectable vitamin B-12.

11 F. Except as limited or restricted by federal or  
12 state law, the drugs, dangerous drugs or controlled  
13 substances listed in Subsection E of this section are  
14 authorized in the specified modes of administration wherein  
15 basic injection certification and prescriptive authority is  
16 provided for the intradermal, intramuscular and subcutaneous  
17 injection of homeopathic, sterile water, topical  
18 vaporcoolants and vitamin B-12.

19 ~~[D-]~~ G. Doctors of oriental medicine certified  
20 for expanded practice and prescriptive authority shall comply  
21 with the compounding requirements for licensed health care  
22 professionals in the United States pharmacopeia and national  
23 formulary. A substance is only authorized for use if  
24 procured, prescribed, administered, compounded and dispensed  
25 in compliance with federal and state law.

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1           H. A doctor of oriental medicine or oriental  
2 medicine student enrolled in a board-approved educational  
3 course or program leading to certification in one of the  
4 oriental medicine expanded practice categories of basic  
5 injection therapy, injection therapy, intravenous therapy or  
6 bioidentical hormone therapy is authorized to perform the  
7 techniques and have the prescriptive authority, for the  
8 duration of the course or program, to administer and compound  
9 the substances that are authorized in the expanded practice  
10 formulary for which the student is studying under the direct  
11 supervision of the teacher of the approved expanded practice  
12 educational course or program. The student is not authorized  
13 to obtain, prescribe or dispense such substances without  
14 direct supervision."

15           Section 3. Section 61-14A-16 NMSA 1978 (being Laws  
16 1993, Chapter 158, Section 24, as amended by Laws 2001,  
17 Chapter 263, Section 1 and Laws 2001, Chapter 266, Section 2)  
18 is amended to read:

19           "61-14A-16. FEES.--The board shall establish a schedule  
20 of reasonable [~~nonrefundable~~] fees not to exceed the  
21 following amounts:

- 22           A. application for licensing . . . . . \$800;
- 23           B. application for reciprocal licensing . . . . . 750;
- 24           C. application for temporary licensing . . . . . 500;
- 25           D. examination, not including the cost of any

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- 1 nationally recognized examination . . . . . 700;
- 2 E. annual license renewal . . . . . 400;
- 3 F. late license renewal . . . . . 200;
- 4 G. expired license renewal . . . . . 400;
- 5 H. temporary license renewal . . . . . 100;
- 6 I. application for approval or renewal of
- 7 approval of an educational program . . . . . 600;
- 8 J. late renewal of approval of an educational
- 9 program . . . . .
- 10 . . . . . 200;
- 11 K. annual continuing education provider
- 12 registration . . . . . 200;
- 13 L. application for [~~extended or~~] expanded
- 14 practice with limited prescriptive authority . . . . . 500;
- 15 M. application for externship supervisor
- 16 registration
- 17 . . . . . 500;
- 18 N. application for extern certification . . 500;
- 19 and
- 20 O. any and all fees to cover reasonable and
- 21 necessary administrative expenses."